

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE: Pierre Goffaux)
Map 104-11-0-A, Parcels 57.00CO & 7300 CO) Davidson County
Commercial Property)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>Parcel 57.00</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$13,000	\$52,900	\$65,900	\$26,360

<u>Parcel 73.00</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$13,000	\$52,900	\$65,900	\$26,360

Appeals have been filed on behalf of the property owner with the State Board of Equalization. The appeals were timely filed on September 29, 2006.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on May 7, 2007, at the Davidson County Property Assessor's Office. Present at the hearing were Pierre Goffaux, the taxpayer, who represented himself; and Mr. Dean Lewis, for the Division of Assessments for the Metro. Property Assessor's Office and Margaret Darby, Metropolitan Attorney.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject properties consist of two condominium apartments located in the Village West complex at 2134 Fairfax Ave, Apartment D-9 and E-9, respectively in Nashville, Tennessee.

The issue before the administrative judge is one of classification of the property; is this residential or commercial property?¹ The subject properties were purchased by the taxpayer at different times, with E-9 being purchased in July of 1985 and D-9 in August of 1986. The structure is a former apartment complex built in 1965 that were subsequently converted to condominiums. There are 5 buildings containing 80 identical units of 552 square feet each. Mr. Goffaux argues that it is the use of the property that should control its classification, he points to a publication titled *2001 Reappraisal Guide* from the Assessor's Office which states in part:

¹ The taxpayer does not contest the value of either unit.

Classification-whether the property is used for residential, commercial, industrial or farm purposes, which determines the percentage of the appraisal which becomes your assessed value;

Mr. Goffaux goes on to state "For over 20 years, Metro classified the units as "Residential" (25% for appraisal). Suddenly, in 2006, I received notice of a reclassification to "commercial" (40%) or a 60% increase in taxes amounting to \$463.60 per year. No explanation was given". Taxpayer's collective exhibit #1.

Article II, Section 28 classifies real property into four categories: public utility, industrial and commercial, residential and farm. The constitution does not further define the classes of property other than to stat, "residential property containing two (2) or more **rental units** is hereby defined as industrial and commercial property." [emphasis added] Castlewood, Inc. v Anderson County, et.al 969 S.W.2d 908; 1998 (Tenn.)

The County's position is clear, pursuant to Tennessee Code Annotated (T.C.A.) § 67-5-501(4), in relevant part:

. . . . All real property which is used, held for use, for dwelling purposes which contains **two (2)** or more rental units is hereby defined and shall classified as "industrial and commercial property".

In *Castlewood*, the Board ruled that rented condominiums, in the same building and under common ownership, should be sub-classified commercial under the Tennessee Constitution and statutes as interpreted in Snow v. City of Memphis, 527 S.W.2d 55 (Tenn. 1975) . The *Castlewood* Court noted that "the purpose and objective of the [amendment to Art. II, § 28] is to tax income-producing property at a higher rate than owner-occupied residences and farms." *Castlewood*, 969 S.W.2d at 910 (quoting *Snow*, 527 S.W.2d at 66). Spring Hill, L.P. et. al v. Tennessee State Board of Equalization, et. al , 2003 Tenn. App. LEXIS 952, M2001-02683-COA-R3-CV, December 31, 2003, Filed.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981)

The administrative judge finds that based on the proof established at the hearing, the controlling statue and the testimony of the taxpayer, the subject properties are properly classified as commercial property. The taxpayer has not sustained his burden in this cause.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>Parcel 57.00</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$13,000	\$52,900	\$65,900	\$26,360

<u>Parcel 73.00</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$13,000	\$52,900	\$65,900	\$26,360

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

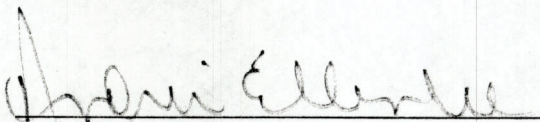
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 15th day of May, 2007.


 ANDREI ELLEN LEE
 ADMINISTRATIVE JUDGE
 TENNESSEE DEPARTMENT OF STATE
 ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Pierre Goffaux
 Margaret Darby, Esq.
 Jo Ann North, Metro. Property Assessor